
SECOND SUBSTITUTE HOUSE BILL 1888

State of Washington

59th Legislature

2005 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Nixon, Morris, Hunter, B. Sullivan, Simpson, Ormsby, Morrell, Haler, Clibborn, Ericks, Williams, Darneille, Dunn, Dickerson, P. Sullivan, Green and Hudgins)

READ FIRST TIME 03/04/05.

1 AN ACT Relating to electronic mail fraud; amending RCW 19.190.010;
2 adding new sections to chapter 19.190 RCW; creating a new section; and
3 prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 19.190.010 and 2003 c 137 s 2 are each amended to read
6 as follows:

7 The definitions in this section apply throughout this chapter
8 unless the context clearly requires otherwise.

9 (1) "Assist the transmission" means actions taken by a person to
10 provide substantial assistance or support which enables any person to
11 formulate, compose, send, originate, initiate, or transmit a commercial
12 electronic mail message or a commercial electronic text message when
13 the person providing the assistance knows or consciously avoids knowing
14 that the initiator of the commercial electronic mail message or the
15 commercial electronic text message is engaged, or intends to engage, in
16 any practice that violates the consumer protection act.

17 (2) "Commercial electronic mail message" means an electronic mail
18 message sent for the purpose of promoting real property, goods, or
19 services for sale or lease. It does not mean an electronic mail

1 message to which an interactive computer service provider has attached
2 an advertisement in exchange for free use of an electronic mail
3 account, when the sender has agreed to such an arrangement.

4 (3) "Commercial electronic text message" means an electronic text
5 message sent to promote real property, goods, or services for sale or
6 lease.

7 (4) "Electronic mail address" means a destination, commonly
8 expressed as a string of characters, to which electronic mail may be
9 sent or delivered.

10 (5) "Electronic mail message" means an electronic message sent to
11 an electronic mail address and a reference to an internet domain,
12 whether or not displayed, to which an electronic mail message can be
13 sent or delivered.

14 (6) "Electronic text message" means a text message sent to a
15 cellular telephone or pager equipped with short message service or any
16 similar capability, whether the message is initiated as a short message
17 service message or as an electronic mail message.

18 ((+6)) (7) "Initiate the transmission" refers to the action by the
19 original sender of an electronic mail message or an electronic text
20 message, not to the action by any intervening interactive computer
21 service or wireless network that may handle or retransmit the message,
22 unless such intervening interactive computer service assists in the
23 transmission of an electronic mail message when it knows, or
24 consciously avoids knowing, that the person initiating the transmission
25 is engaged, or intends to engage, in any act or practice that violates
26 the consumer protection act.

27 ((+7)) (8) "Interactive computer service" means any information
28 service, system, or access software provider that provides or enables
29 computer access by multiple users to a computer server, including
30 specifically a service or system that provides access to the internet
31 and such systems operated or services offered by libraries or
32 educational institutions.

33 ((+8)) (9) "Internet" means collectively the myriad of computer
34 and telecommunications facilities, including equipment and operating
35 software, that comprise the interconnected world wide network of
36 networks that employ the transmission control protocol/internet
37 protocol, or any predecessor or successor protocols to such protocol,
38 to communicate information of all kinds by wire or radio.

1 (10) "Internet domain name" refers to a globally unique,
2 hierarchical reference to an internet host or service, assigned through
3 centralized internet naming authorities, comprising a series of
4 character strings separated by periods, with the right-most string
5 specifying the top of the hierarchy.

6 ~~((+9))~~ (11) "Person" means a person, corporation, partnership, or
7 association.

8 (12) "Personally identifying information" means an individual's:
9 (a) Social security number; (b) driver's license number; (c) bank
10 account number; (d) credit or debit card number; (e) personal
11 identification number; (f) automated or electronic signature; (g)
12 unique biometric data; (h) account passwords; or (i) any other piece of
13 information that can be used to access an individual's financial
14 accounts or to obtain goods or services.

15 (13) "Web page" means a location, with respect to the world wide
16 web, that has a single uniform resource locator or other single
17 location with respect to the internet.

18 NEW SECTION. Sec. 2. A new section is added to chapter 19.190 RCW
19 to read as follows:

20 No person may solicit, request, or take any action to induce
21 another person to provide personally identifying information by means
22 of a web page, electronic mail message, or otherwise using the internet
23 by representing oneself, either directly or by implication, to be a
24 business or individual, without the authority or approval of such
25 business or individual.

26 NEW SECTION. Sec. 3. A new section is added to chapter 19.190 RCW
27 to read as follows:

28 (1) A person who is injured under this chapter may bring a civil
29 action in the superior court to enjoin further violations, and to seek
30 up to five hundred dollars per violation, or actual damages, whichever
31 is greater.

32 (2) A person engaged in the business of providing internet access
33 service to the public, an owner of a web page, or trademark owner who
34 is adversely affected by reason of a violation of section 2 of this
35 act, may bring an action against a person who violates section 2 of
36 this act to:

1 (a) Enjoin further violations of section 2 of this act; and
2 (b) Recover the greater of actual damages or five thousand dollars
3 per violation of section 2 of this act.
4 (3) In an action under subsection (2) of this section, a court may
5 increase the damages up to three times the damages allowed by
6 subsection (2) of this section if the defendant has engaged in a
7 pattern and practice of violating this section. The court may award
8 costs and reasonable attorneys' fees to a prevailing party.

9 NEW SECTION. **Sec. 4.** This act does not expand, contract, alter,
10 or amend any cause of action allowed under chapter 19.86 RCW and does
11 not affect in any way the application of chapter 19.86 RCW to any
12 future case or fact pattern.

13 NEW SECTION. **Sec. 5.** A new section is added to chapter 19.190 RCW
14 to read as follows:

15 It is the intent of the legislature that this chapter is a matter
16 of statewide concern. This chapter supersedes and preempts all rules,
17 regulations, codes, ordinances, and other laws adopted by a city,
18 county, city and county, municipality, or local agency regarding the
19 practices covered by this chapter and notices to consumers from
20 computer software providers regarding information collection.

21 NEW SECTION. **Sec. 6.** If any provision of this act or its
22 application to any person or circumstance is held invalid, the
23 remainder of the act or the application of the provision to other
24 persons or circumstances is not affected.

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